

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 16

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOHN A. SCHOLZ

Appeal No. 1997-4175
Application No. 07/805,703¹

ON BRIEF

Before KRASS, JERRY SMITH and LALL, Administrative Patent Judges.

KRASS, Administrative Patent Judge.

DECISION ON APPEAL

¹ Application for patent filed December 11, 1991.

Appeal No. 1997-4175
Application No. 07/805,703

This is a decision on appeal from the final rejection of claims 20 through 23, all the claims pending in the application.

The invention is directed to a structure for transferring an amalgam into an electrode support tube at the end of an arc tube.

Independent claim 20 is reproduced as follows:

20. An arc tube assembly comprising:

a light-transmissive arc tube having an end cap sealed to each end thereof;

an electrode assembly sealed in each of said end caps, each electrode assembly comprising an electrode attached to an electrode support tube, each electrode support tube having a generally cylindrical wall, at least one of said electrode support tubes having an opening adjacent to the respective end cap, said opening comprising a slot in the wall of said electrode support tube, said slot having one edge depressed relative to the other edge so as to define a concave surface adjacent to said slot, and

a chemical fill in an interior region of the electrode support tube having said opening.

The examiner relies on the following references:

Delembre et al. (Delembre)	3,716,744	Feb. 13, 1973
Wesselink et al. (Wesselink)	4,157,485	Jun. 5, 1979

Appeal No. 1997-4175
Application No. 07/805,703

Claims 20 through 23 stand rejected under 35 U.S.C. 103
as unpatentable over Delembre and Wesselink.

Reference is made to the brief and answer for the
respective positions of appellant and the examiner.

OPINION

We have carefully reviewed the evidence before us, including, inter alia, the arguments of appellant and the examiner and the applied references and we conclude, based on such evidence, that the instant claimed subject matter would not have been obvious, within the meaning of 35 U.S.C. § 103.

The examiner applies Delembre and specifically points to opening 6, indicating that Delembre does not specify the opening to be a vertically or horizontally elongated slot. However, the examiner relies on Wesselink for a vertically elongated slot for evacuating or filling an arc tube with an amalgam, concluding that the combination of these references would have made the instant claimed subject matter obvious and indicating that the claimed vertically or horizontally elongated slot is a "design alternative to the circular opening of Delembre" [answer-page 4].

We find various problems with the examiner's position. The circular opening in Delembre is not, in our view, a "slot" and we fail to find any reason for the skilled artisan to have made it so. Independent claim 20 requires this slot to have "one edge depressed relative to the other edge so as to define

a concave surface adjacent to said slot." Notwithstanding the examiner's explanation of how the opening in Delembre may be considered to have the claimed properties [answer-page 5], we do not find any suggestion in the applied references for forming a slot, as claimed.

Moreover, and most importantly, the instant claims require a chemical fill in an interior region of "the electrode support tube." Delembre doesn't teach anything about an amalgam, or chemical fill. Wesselink, although concerned with amalgams, is directed to applying the amalgam in the discharge space of the arc tube and there is no teaching or suggestion therein for applying the chemical fill to an interior region of "the electrode support tube." We do not find the examiner's argument [answer-page 5] that, in Delembre, "the chemical fill is introduced, through the electrode support tube, through the opening, in to [sic] a discharge tube" to be persuasive. Since there is no teaching, in Delembre, of a chemical fill, or amalgam, in an interior region of the electrode support tube, the examiner's conclusion appears to be based on speculation through hindsight. The total disclosure in Delembre, regarding hole

Appeal No. 1997-4175
Application No. 07/805,703

6, is at column 2, lines 19-20: "The hole **6** is provided for evacuating or filling the discharge area **11**."

In our view, the examiner has not established the requisite prima facie case of obviousness for a proper rejection under 35 U.S.C. § 103. Accordingly, the examiner's decision is reversed.

REVERSED

ERROL A. KRASS)	
Administrative Patent Judge)	
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)	
)	BOARD OF PATENT
JERRY SMITH)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
)	
)	
PARSHOTAM S. LALL)	
Administrative Patent Judge)	

Appeal No. 1997-4175
Application No. 07/805,703

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Appeal No. 1997-4175
Application No. 07/805,703

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